

STATE OF CALIFORNIA  
FRAUD ASSESSMENT COMMISSION MEETING  
SAN DIEGO, CALIFORNIA  
JANUARY 13, 2009

In attendance: William Zachry, Chair, and Commission Members Lisa Middleton, Jiles Smith, Carol Schatz and Lilia Garcia.

Others present: Rick Plein, Deputy Commissioner, Enforcement Branch, California Department of Insurance; Eric Weirich, Acting Workers' Compensation Bureau Chief and Vanessa Himelblau, Senior Staff Counsel, Legal Division.

Chair William Zachry opened the meeting and offered his appreciation to the San Diego County District Attorney's Office, including Deputy District Attorney Dominic Dugo and his staff, Florinda Johnson and Mary Dickerson for their hard work in hosting the Commission meeting.

**District Attorneys**

Dominic Dugo presented an overview of the annual California District Attorneys Association (CDAA) Conference which was held in Anaheim. As a result of the joint effort, the conference was attended by approximately 240 participants, including district attorney offices, prosecutors, investigators, and various individuals from the Department of Insurance and the Fraud Assessment Commission (FAC). Mr. Dugo thanked Darlyn Regan and Jiles Smith, both Fraud Assessment Commissioners for being presenters at the conference. He noted that CDAA was already working with CDI on next year's conference. Mr. Dugo recognized the newest FAC member, Lisa Middleton. Mr. Dugo acknowledged that he has worked with Ms. Middleton in the past and believes she is a fine addition to the Commission.

Chair William Zachry personally thanked Darlyn Regan for her participation and efforts on the Commission. He remarked that she did an excellent job and in particular as a representative on the department's annual Workers' Compensation Review Panel. "Ms. Regan participated for two years on the Review Panel and this is probably the hardest and most complex piece of what happens when you review every single district attorney grant proposal. Darlyn Regan did an outstanding job on these, has always made all of the meetings, has been here and has been a stalwart supporter, and so we have a gift for her," remarked Zachry.

Mr. Zachry welcomed Lisa Middleton, Senior Vice President, Internal Affairs as the newest member on the Fraud Assessment Commission, representing the State Compensation Insurance Fund (SCIF). Additionally, Mr. Zachry noted that

Rick Plein, was the newly appointed Deputy Commissioner of the Enforcement Branch and this was his first meeting in that capacity.

In general, Mr. Zachry commented that he believes that medical provider fraud is one of the biggest challenges. He further noted that the Workers' Compensation Appeals Board (WCAB) judges are not holding the medical providers accountable in situations where there are liens being filed. "This problem is chronic in Southern California but we are hearing that it has moved north into the Bakersfield area. We need to re-educate the WCAB judges on fraud issues and medical providers and the fighting of liens. Because if we can cut off the funding at the base of it, we can stop much of the medical provider fraud in the system," remarked Zachry.

### **Motion**

Commissioner Schatz made the motion to accept the minutes as submitted.

Commissioner Smith seconded the motion.

### **Action**

The motion passed unanimously.

A report from the Watsonville Enforcement Collaborative (WEC) was presented by Chairman Zachry on behalf of the Executive Director, Dori Rose Inda who was unable to attend the Commission meeting.

At the last WEC meeting, representatives discussed the strengths and challenges of enforcement collaboration efforts and challenges of investigating employer fraud cases where the workers are undocumented and fearful of working the enforcement agencies during the investigation. Video surveillance was identified as one tool to overcome this challenge.

A sub-group of WEC is meeting with the Department of Industrial Relations (DIR), Director John Duncan and others to focus on increased access to the Uninsured Employers Benefit Trust Fund (UEBTF). One of the best improvements under this new administration is that the length of time from date of injury to the date of first service has decreased from two years to one year.

### **Frank Neuhauser**

Chairman Zachry introduced Frank Neuhauser, Project Director, University of California, Berkeley who presented an excellent report on his research findings. In summary, The Fraud in Workers' Compensation Payroll Reporting Study analyzes the degree to which employers under-report or mis-report for workers' compensation insurance purposes. The study examined data from the time period of 1997 to 2005. The study identified that under-reported payroll ranged from \$36 billion to \$68 billion in the year 2005, which depicts the potential magnitude of fraud in the California workers' compensation system. The entire

report is located on the Fraud Assessment Commission website within the Department of Insurance.

The Commission raised various issues relating to the study. One area of interest to the Chair is insurer access to Employment Development Department (EDD) information to prepare payrolls, as well as compare whether or not people have insurance. "At the next meeting, I will invite John Duncan, Director of DIR to provide an update on what he is finding within that experience," state Zachry.

Mr. Zachry also commented on whether or not insurance companies have electronic connectivity with the software companies that prepare payroll information.

Commissioner Middleton noted that many organizations are moving in that directions but that decision is up to the employer whether or not to provide access.

Commissioner Garcia raised the issue of legally independent contractors. Ms. Garcia noted that in the janitorial industry there are serious misclassifications. Mr. Neuhauser commented that some contracts set-up in the janitorial industry look like employment, and smell like employment, but they are still called independent contractor relationships.

### **Motion**

Commissioner Middleton made the motion to accept the report as submitted.

Commission Garcia seconded the motion.

### **Action**

The motion passed unanimously.

### **Fraud Division**

Rick Plein, Deputy Commissioner, Enforcement Branch addressed the Commission. First, he called on Senior Legal Counsel Himelblau to provide the opinion on the legalities of releasing the Special Investigative Unit (SIU) audit reports.

Vanessa Himelblau, Senior Legal Counsel, Department of Insurance addressed the Commission regarding the release of SIU audit reports. There are many reasons that the department preserves the confidentiality of SIU examinations reported Himelblau. The four most important ones are as follows:

- 1) Statutory Mandates
- 2) Contractual Obligation with the Department of Justice
- 3) Preservation of anti-fraud protocols, procedures, techniques and strategy and
- 4) Maintaining Immunity for insurers reporting suspected fraud.

Ms. Himelblau provided the FAC with background on each of the four reasons as to why the department could not provide SIU audits to the Commission.

The Commission was somewhat surprised at the various legal complexities surrounding the issue. Mr. Zachry did note that he would continue to request and ask questions on the fines, penalties, and actions undertaken on carriers by the department.

Deputy Commissioner Plein remarked, "What we are looking for really when we deal with insurance companies is we are looking for not simply compliance, but we are looking for commitment, which leads to the questions in the areas that you are addressing."

At the last meeting, the Fraud Division was asked to research what activities were being addressed by other states regarding insurance fraud. Although the Fraud Division made requests of the ten largest states, the information provided by a few was a mixed bag of all types of fraud, other states have stonewalled the request and others have not provided any response.

Chairman Zachry commented that he too has not been very successful obtaining that type of information. As the discussion continued, Dominic Dugo, San Diego County noted that the annual report provided by the Coalition Against Insurance Fraud can add some perspective. "However, California has specific programs, independently funded and other states do not," added Deputy Commissioner Plein.

Deputy Commissioner Plein continued his report with case highlights from a few grant funded counties in Los Angeles, Marin and Amador. These cases representing premium fraud, medical-provider and claimant fraud reflect the importance of balanced caseloads by counties and the Fraud Division.

Deputy Commissioner Plein reported that the annual District Attorney Information meeting is scheduled for March 12, 2009 in Sacramento. The grant applications are being mailed the second week of February. Counties will be receiving their first grant disbursement before the end of February and finally the midyear report for this fiscal year is due to Fraud Division on January 31, 2009.

Chairman Zachry offered three observations:

- 1) San Diego County has recently announced a public outreach effort that is significant in terms of billboards and negotiated reduced rates with the billboard company. At the next meeting, the Commission would be interested to know whether or not this has had a visible impact.

2) Recently, I heard of a case out of LA which put an end to diagnostic billing for services never performed. This continues to be a problem and we need to keep an eye on this type of activity.

3) I believe there is an effort for increased public disclosure on the oversight of self-insurance groups. I think this is an important piece of the puzzle to help fight fraud.

Finally, the Chairman called to adjourn the meeting in the memory of Paul Fick. "Paul Fick was a, what I would call a gently giant. He was a very gracious gentleman. He worked as a Deputy District Attorney in Riverside County. He recently passed away and my condolences to his family. He will be missed, and he was a great supporter of this process."

The meeting adjourned at 12:09 p.m.